UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

H. RICHARD AUSTIN, Plaintiff v. DOWNS, RACHLIN & MARTIN, HAROLD EATON, GREGORY CLAYTON, DOUGLAS G. PETERSON & ASSOC., STEPHEN HOUGHTON, and JIMMY PAU, Defendants	:	Docket No. 1:03-CV-204

RULING ON DEFENDANTS' MOTIONS TO DISMISS
(Papers 17, 18, 19, and 20)

Plaintiff, H. Richard Austin, filed suit alleging that Defendants engaged in a conspiracy to defraud Plaintiff and this Court by fabricating scientific evidence in relation to Plaintiff's prior unsuccessful lawsuit. Defendants have filed separate Motions to Dismiss under Fed. R. Civ. P. 12(b)(6).

BACKGROUND

To put this case in context, one must to go back to 1994 when Plaintiff filed his first lawsuit in this Court, *Austin v. The Hanover Insurance Company, et al*, Docket No. 95-cv-170, seeking insurance proceeds from Hanover after a fire destroyed his home (*Austin I*). Specifically listed on Plaintiff's Trial Memorandum as an issue for trial was the validity of Hanover's scientific evidence.

The case was tried to a jury, which ultimately decided that Hanover did not wrongfully deny insurance coverage to Plaintiff because the fire was caused by arson. Plaintiff appealed to the U.S. Court of Appeals for the Second Circuit which affirmed the judgment of the District Court. See Austin v. Hanover Ins. Co., 165 F.3d 13 (2d Cir. 1998).

On September 2, 1999, Plaintiff filed a second action, Docket No. 99-cv-252, styled as a petition for relief from judgment (*Austin II*). In *Austin II*, Plaintiff alleged that Hanover engaged in a scheme to defraud by fabricating scientific evidence. The Court dismissed *Austin II*, ruling it was "clearly barred by res judicata." Once again Plaintiff appealed to the Second Circuit which affirmed in an unpublished mandate. See Austin v. Hanover Ins. Co., 14 Fed. Appx. 109, 110 (2d Cir. 2001).

Now before the Court is Plaintiff's third attempt: a lawsuit against Defendants, all of whom were either attorneys or experts for Hanover. The issue is the same as that raised in the Trial Memorandum of *Austin I*, namely the validity of scientific evidence Hanover used to prove arson. In this third attempt, Plaintiff alleges that the attorneys and experts engaged in a conspiracy with Hanover to fabricate the scientific evidence.

Defendants have filed separate Motions to Dismiss arguing

that the action is barred by res judicata and collateral estoppel. The Court agrees.

DISCUSSION

In deciding a Rule 12(b)(6) motion, a court must accept as true all of the allegations contained in the plaintiff's complaint and draw all reasonable inferences in his favor. See Burnette v. Carothers, 192 F.3d 52, 56 (2d Cir. 1999), cert. denied, 531 U.S. 1052 (2000). The complaint should not be dismissed unless it appears beyond all doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to relief. Id. When considering a motion to dismiss a pro se complaint, courts must construe the complaint liberally. Cruz v. Gomez, 202 F.3d 593, 597 (2d Cir. 2000). Nonetheless, upon a review of the Complaint, it is clear that the doctrines of res judicata and collateral estoppel mandate dismissal of Plaintiff's suit.

I. Res Judicata or Claim Preclusion

Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Flaherety v. Lang, 199 F.3d 607, 612 (2d Cir. 1999). Courts have recognized that defendants who were not parties to earlier litigation may still invoke the doctrine of

res judicata to bar relitigation of claims that a plaintiff asserted in prior proceedings resolved in a final judgment. See Nevada v. United States, 463 U.S. 110, 143 (1983). Here, Plaintiff raised the exact same fraud claim in prior proceedings which were resolved in a final judgment, and now he attempts to raise this same claim by substituting new defendants. Plaintiff cannot relitigate the same claim merely by substituting new, different defendants, in this case the attorneys and experts affiliated with the party he unsuccessfully sued in *Austin I*.

II. Collateral Estoppel or Issue Preclusion

Nonmutual collateral estoppel requires that the prior adverse decision bar Plaintiff from relitigating the previously decided issue against new defendants. See Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found., 402 U.S. 313, 350 (1971). The Second Circuit enunciated a four-factor test for applying collateral estoppel:

1. the issues in both proceedings are identical;
2. the issue in the prior proceeding was litigated and decided;
3. there was a full and fair opportunity to litigate in the prior proceeding; and
4. the issue previously litigated was necessary to support a valid and final judgment on the merits.

United States v. Hussein, 178 F.3d 125, 129 (2d Cir. 1999).

Each factor appears to be met in this case: In *Austin I*, Plaintiff raised the issue of the validity of the scientific evidence used by Hanover; Plaintiff did not convince the fact-finder that the evidence was fabricated; he had ample opportunity to litigate the issue in *Austin I*; and the conclusion that the evidence was not fabricated was essential for finding in favor of Hanover. Thus, collateral estoppel prohibits Plaintiff from rechallenging the validity of scientific evidence that he challenged in *Austin I*.

CONCLUSION

For the reasons discussed herein, Defendants' Motions to Dismiss the Amended Complaint are GRANTED.

SO ORDERED.

Dated at Brattleboro, Vermont this ___ day of October, 2003.

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J. Garvan Murtha, U.S. District Judge